

NOT TO BE INCLUDED
IN BOUND VOLUMES

LS
Janesville, WI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

RATHGIBSON, INC.

and

Case 30-RC-6747

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 139, AFL-CIO

DIRECTION

The National Labor Relations Board has considered objections and determinative challenges in an election held April 2, 2009, and the hearing officer's report recommending disposition of them.¹ The election was conducted pursuant to a

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed __U.S.L.W.__ (U.S. September 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed 77 U.S.L.W. 3670 (U.S. May 22, 2009) (No. 08-1457); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. August 18, 2009) (No. 09-213). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir.

Stipulated Election Agreement. The tally of ballots shows 60 votes for and 59 against the Petitioner, with 4 determinative challenged ballots.

The hearing officer resolved the challenged ballots that were before her, and recommended that the Board sustain the Petitioner's Objections 1, 4, and 6 and direct a new election, if a revised tally of ballots does not establish a majority of votes for the Petitioner. The Employer filed exceptions to the hearing officer's sustaining of the objections. The Petitioner filed a brief answering the exceptions. There are no exceptions to the hearing officer's disposition of the challenged ballots.

The Petitioner challenged the ballots of four voters at the election. Prior to the hearing, the Employer conceded that the challenge of Al Kilcoyne's ballot should be sustained, and therefore his ballot will not be counted. Following the close of the hearing, the Petitioner withdrew its challenge of Robert Dibble's ballot; therefore, his ballot is to be counted. In her report, the hearing officer recommended that the challenges of the ballots of Timothy Armstrong and Tracy Pankhurst be overruled and that their ballots be counted.

2009), petitions for rehearing denied Nos. 08-1162, 08-1214 (July 1, 2009).

In the absence of exceptions, we adopt the hearing officer's resolution of the Petitioner's challenges to ballots. Accordingly, there are three ballots still to be counted in this proceeding. We will direct the Regional Director to open and count these ballots and prepare a revised tally. We find it unnecessary at this time to consider the Employer's exceptions to the hearing officer's sustaining of Objections 1, 4, and 6, because these objections will be moot if the Petitioner receives a majority of the votes in the revised tally.

IT IS DIRECTED that the Regional Director for Region 30 shall, within 14 days of the date of this Direction, open and count the ballots of employees Timothy Armstrong, Robert Dibble, and Tracy Pankhurst at a time and place set by him. The Regional Director shall then prepare and serve upon the parties a revised tally of ballots. If the revised tally of ballots shows that the Petitioner has received a majority of the valid ballots cast, the Petitioner's Objections 1, 4, and 6 will be moot and the Regional Director shall issue a certification of representative. If, however, the revised tally of ballots shows that the Petitioner has not received a majority of the ballots

cast, then the Regional Director immediately shall transfer this proceeding back to the Board for further appropriate action.

Dated, Washington, D.C. , **September 29, 2009.**

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD